

These problems notwithstanding, Georgia-Pacific is willing to consent to NCR's submission of Mr. Braithwaite's expert report in lieu of his live testimony, provided that Georgia-Pacific is allowed to submit something equivalent in response—namely, a written response of no more than seven (7) pages that would outline the points Georgia-Pacific would expect to make through cross-examination. That response would rely in part on Mr. Braithwaite's deposition testimony, but it also would describe other lines of inquiry that Georgia-Pacific would pursue in cross-examination at trial.

NCR rejected that proposal. NCR says it would “inject advocacy into a proposal for presenting evidence.” NCR Motion at 3. NCR instead insists that Georgia-Pacific rely solely on designations from Mr. Braithwaite's deposition, which NCR argues would be even better than cross-examination at trial. NCR is wrong.

First, NCR—not Georgia-Pacific—is the party injecting advocacy into the presentation of evidence. Expert reports are not dispassionate academic exercises. They are well-crafted defenses of the expert's opinions. Georgia-Pacific cannot consent to the submission of this type of advocacy without being afforded the opportunity to respond in kind.

Second, a discovery deposition is not remotely the equivalent of trial cross-examination. An opposing party takes an expert witness's deposition to learn how best to challenge the expert's opinions. That type of examination is not the same as cross-examination at trial. Indeed, it is frequently advantageous to reserve the more potent lines of attack for trial rather than preview them at the expert's deposition. That was the case in Georgia-Pacific's deposition Mr. Braithwaite. Georgia-Pacific took that deposition to learn more about Mr. Braithwaite's opinions—not to perpetuate his testimony—and therefore did pursue every angle of attack.

NCR's proposal is thus decidedly asymmetrical. NCR seeks leave to submit—over Georgia-Pacific's valid objection—hearsay evidence in the form a carefully-refined expert report, while relegating Georgia-Pacific to the transcript of a discovery deposition for any response. The two forms of presentation are not remotely equivalent. Granting NCR's request would prejudice Georgia-Pacific and therefore should be denied.

In sum, Georgia-Pacific is willing to withdraw any hearsay objection to the introduction of Mr. Braithwaite's expert report in lieu of his live testimony, provided that Georgia-Pacific be allowed to submit a written response of no more than seven pages that would outline the points Georgia-Pacific expected to make through cross-examination of the witness. Otherwise, Georgia-Pacific stands on its hearsay objection to the submission of Mr. Braithwaite's expert report in lieu of his live testimony.

Dated: February 14, 2013

**GEORGIA-PACIFIC CONSUMER PRODUCTS,
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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2013, I electronically filed the foregoing using the ECF system, which will send notification of such filing by operation of the Court's electronic systems. Parties may access this filing via the Court's electronic system.

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